

In the Matter of ILLINOIS ZINC COMPANY and INTERNATIONAL UNION
OF MINE, MILL AND SMELTER WORKERS, LOCAL No. 443

Case No. C-1137.—Decided October 13, 1939

Mining, Smelting, and Manufacturing Industry—Settlement: stipulation provides for compliance with the Act, including reinstatement with back pay as to nineteen persons, reinstatement without back pay as to fifty other persons, disestablishment of company-dominated union, and recognition of petitioning union.

Mr. E. P. Davis, for the Board.

Mr. Gobel F. Cravens, of Henryetta, Okla., for the Union.

Small & Arney, by *Mr. Binford Arney*, and *Mr. C. C. Small*, of Amarillo, Tex., for the respondent.

Mr. Ray Johnson, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by International Union of Mine, Mill and Smelter Workers, Local No. 443, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated July 28, 1938, and supplemental complaint dated August 19, 1938, against Illinois Zinc Company, Dumas, Texas, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.¹

Concerning the unfair labor practices the complaint and supplemental complaint alleged in substance (1) that the respondent domi-

¹ On June 27, 1938, the Board issued an order consolidating this case and *Matter of Illinois Zinc Company and International Union of Mine, Mill, and Smelter Workers, Local 443* (Case No. R-1005), involving a petition for investigation and certification of representatives. On September 22, 1939, the Board revoked this order.

nated and interfered with a labor organization among its employees known as the Moore County Smelter Workers Union, by contributing support to said organization and by circulating or permitting circulation of membership cards in said organization during working hours on the respondent's property; (2) that the respondent locked out and refused to reinstate approximately 51 employees because they joined the Union and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; (3) that on April 8, 1938, and at all times thereafter, a majority of the employees in the appropriate unit had designated the Union as their representative for the purposes of collective bargaining, and that on April 8, 1938, and at various dates thereafter, particularly April 13, 23, 25, and 26, 1938, the respondent refused to bargain with the Union as the exclusive representative of all the employees in the appropriate unit; (4) that following the respondent's refusal to bargain the Union instituted a strike occasioned by the refusal to bargain; and (5) that the respondent by attempting to break said strike, by employing strikebreakers, by attempting to induce its employees to cease their union activities and quit the strike and by other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On August 5, 1938, the respondent filed its answer and on August 15, 1938, its amended answer to the complaint in which it admitted some of the allegations concerning the nature and scope of its business, but denied the allegations of unfair labor practices.

Pursuant to notice, and notices of postponement, a hearing was held on August 15, 16, 17, 18, 19, 20, 22, and 29, 1938, at Dumas, Texas, before Thomas S. Wilson, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

On August 29, 1938, the Board and the respondent entered into an agreement waiving all formalities provided by the Revised Statutes of Texas in the taking and returning of the deposition of George Klimek, except a showing that answers to the interrogatories were given under oath. The Board and the respondent also agreed that such deposition when taken should become a part of the record. Pursuant to the agreement of August 29, 1938, interrogatories, cross-interrogatories, and answers thereto were filed on September 21, 1938, and incorporated into the record.

On January 17, 1939, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act as alleged in the complaint.

The Trial Examiner recommended that the respondent cease and desist from its unfair labor practices and from contributing support to Moore County Smelter Workers Union or any other labor organization, and that it offer reinstatement with back pay to 17 employees, reinstate 50 other employees, upon request bargain collectively with International Union of Mine, Mill and Smelter Workers Union, Local No. 443, as the exclusive representative of all employees in the appropriate unit, post notices of its intention to comply with Act, and notify the Regional Director for the Sixteenth Region within ten (10) days what steps it had taken to comply with the above requirements. On January 23, 1939, the Board, at the request of the respondent, extended the time for filing exceptions to the Trial Examiner's Intermediate Report until February 11, 1939.

On February 3 and 13, 1939, the Union and the respondent, respectively, filed their exceptions to the Intermediate Report.

On August 8, 1939, the respondent, the Union, and counsel for the Board entered into a stipulation in settlement of the case. This stipulation provides as follows:

STIPULATION

It is hereby stipulated and agreed by and between Illinois Zinc Company, the respondent herein, and the International Union of Mine, Mill and Smelter Workers, Local No. 443, and the attorney for the National Labor Relations Board, as follows:

1. The parties hereto expressly waive oral argument and the making of findings of fact and conclusions of law by the National Labor Relations Board and hereby agree that this stipulation may be made a part of the record in this proceeding by filing same with the Chief Trial Examiner of the National Labor Relations Board in Washington, D. C.

2. The National Labor Relations Board may upon the record and intermediate report herein forthwith make jurisdictional findings as follows:

That respondent is an Illinois corporation, duly licensed and doing business in the State of Texas. The principal office of respondent is located in Chicago, Illinois. The capital stock of respondent consists of an authorized 150,000 shares of no par value, of which approximately 95,140 shares have been issued. Respondent owns and operates rolling mills at Peru and Chicago, Illinois. It also owns and operates a smelting plant located in Moore County, Texas, and owns and operates mines in Deming, New Mexico. Respondent causes and has continuously caused a large part of its raw material, namely zinc ore, coal, machinery and equipment, used in the manufacture of its

products, to be purchased and transported in interstate commerce, from and through states of the United States other than the State of Texas, to its smelter in Moore County, Texas, and causes and has continuously caused the products manufactured by it to be sold and transported in interstate commerce from its plant in Moore County, Texas, to, into and through States of the United States other than the State of Texas.

That the activities of the respondent, as set forth above, occurring in connection with the operations of the respondent, have a close, intimate and substantial relation to trade, traffic, commerce and transportation among the several states and tend to lead and have led to labor disputes, burdening and obstructing commerce and the free flow of commerce.

3. It is further stipulated and agreed by and between the respective parties hereto that the National Labor Relations Board, upon the record in this proceeding and the intermediate report herein and upon this stipulation, may forthwith make jurisdictional findings and enter its order to the following effect:

The respondent, Illinois Zinc Company, shall:

(a) Cease and desist from interfering with, restraining and coercing its employees in the exercise of their right to self-organization, to form, join, or assist the International Union of Mine, Mill and Smelter Workers, Local No. 443, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, mutual aid or other protection.

(b) Cease and desist from discouraging membership in the International Union of Mine, Mill and Smelter Workers, Local No. 443, or any other labor organization, by discriminating in regard to hire or tenure of employment or condition of employment.

(c) Cease and desist from dominating or interfering with the formation or administration of Moore County Smelter Workers Union, or any other labor organization, and from contributing support to said Moore County Smelter Workers Union, or any other labor organization.

(d) Cease and desist from refusing to bargain collectively with the International Union of Mine, Mill and Smelter Workers, Local No. 443, as the exclusive representative of the production and maintenance employees, at its smelter in Moore County, Texas.

(e) In order to effectuate the policies of the Act, take the following affirmative action:

(1) Upon application offer first to those employees listed in Exhibit B hereto attached immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing those new employees hired since April 22, 1938, if necessary to provide employment.

(2) Make whole the employees listed in Exhibit B attached hereto by paying to each of them the sum of money set forth opposite their respective names.

(3) Upon application offer to those employees listed in Exhibit A immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing those new employees hired since April 22, 1938, if necessary to provide employment. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for the remaining employees, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities following a system of seniority to such extent as has heretofore been applied in the conduct of respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons except those mentioned in (1) above are hired for such work.

(4) Withdraw all recognition from Moore County Smelter Workers Union as the representative of its employees for the purpose of dealing with respondent in respect to labor disputes, grievances, rates of pay, wages, hours of employment, and other conditions of employment and completely disestablish Moore County Smelter Workers Union.

(5) Upon request, bargain collectively with International Union of Mine, Mill and Smelter Workers, Local No. 443, as the exclusive bargaining representative of its production and maintenance employees excluding clerical and supervisory employees in respect to rates of pay, wages, hours of employment and other conditions of employment.

(6) Immediately post notices to its employees in conspicuous places throughout its smelter that the respondent will cease and

desist in the manner aforesaid and maintain said notices for a period of at least sixty (60) consecutive days.

(7) Notify the Regional Director for the Sixteenth Region of the National Labor Relations Board within ten (10) days from the date of the issuance of the order of the National Labor Relations Board herein agreed to what steps respondent has taken to comply with said order.

The stipulation herein made and the terms and provisions thereof are made subject to the approval of the National Labor Relations Board.

On September 22, 1939, the Board issued its order approving the above stipulation, making it part of the record, and transferring the proceeding to the Board for the purpose of a decision and order by the Board.

Upon the above stipulation and the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Illinois Zinc Company, an Illinois corporation, has its principal office in Chicago, Illinois. The respondent is duly licensed to do business in the State of Texas and operates a smelting plant located in Moore County, Texas. It also owns and operates mines in Deming, New Mexico, and rolling mills at Peru and Chicago, Illinois.

A large portion of the raw materials used by the respondent in the manufacture of its products at its plant in Moore County, Texas, are purchased and transported in interstate commerce from and through States of the United States other than the State of Texas. The products manufactured at the respondent's plant in Moore County, Texas, are sold and transported to States other than the State of Texas.

The respondent admits that it is engaged in interstate commerce within the meaning of the Act.

We find that the above-described operations constitute a continuous flow of trade, traffic, and commerce among the several States.

ORDER

Upon the basis of the above findings of fact and stipulation, and pursuant to Section 10.(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Illinois Zinc Company, Dumas, Texas, shall:

1. Cease and desist from interfering with, restraining and coercing its employees in the exercise of their right to self-organization, to

form, join, or assist the International Union of Mine, Mill and Smelter Workers, Local No. 443, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, mutual aid or other protection.

2. Cease and desist from discouraging membership in the International Union of Mine, Mill and Smelter Workers, Local No. 443, or any other labor organization, by discriminating in regard to hire or tenure of employment or condition of employment.

3. Cease and desist from dominating or interfering with the formation or administration of Moore County Smelter Workers Union, or any other labor organization, and from contributing support to said Moore County Smelter Workers Union, or any other labor organization.

4. Cease and desist from refusing to bargain collectively with the International Union of Mine, Mill and Smelter Workers, Local No. 443, as the exclusive representative of the production and maintenance employees, at its smelter in Moore County, Texas.

5. In order to effectuate the policies of the Act, take the following affirmative action:

(a) Upon application offer first to those employees listed in Exhibit B hereto attached immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing those new employees hired since April 22, 1938, if necessary to provide employment;

(b) Make whole the employees listed in Exhibit B attached hereto by paying to each of them the sum of money set forth opposite their respective names;

(c) Upon application offer to those employees listed in Exhibit A immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing those new employees hired since April 22, 1938, if necessary to provide employment. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for the remaining employees, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities following a system of seniority to such extent as has heretofore been applied in the conduct of respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth

in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons except those mentioned in (a) above are hired for such work;

(d) Withdraw all recognition from Moore County Smelter Workers Union as the representative of its employees for the purpose of dealing with respondent in respect to labor disputes, grievances, rates of pay, wages, hours of employment, and other conditions of employment and completely disestablish Moore County Smelter Workers Union;

(e) Upon request, bargain collectively with International Union of Mine, Mill and Smelter Workers, Local No. 443, as the exclusive bargaining representative of its production and maintenance employees excluding clerical and supervisory employees in respect to rates of pay, wages, hours of employment and other conditions of employment;

(f) Immediately post notices to its employees in conspicuous places throughout its smelter that the respondent will cease and desist in the manner aforesaid and maintain said notices for a period of at least sixty (60) consecutive days;

(g) Notify the Regional Director for the Sixteenth Region of the National Labor Relations Board within ten (10) days from the date of the issuance of the Order of the National Labor Relations Board herein agreed to what steps respondent has taken to comply with said Order.

EXHIBIT A

James P. Abbott.
M. O. Apperson.
Myrna D. Miller.
A. L. McDonald, Sr.
J. D. Nelson.
S. Severson.
L. T. Kinnon.
J. E. Marphen.
H. W. Hampton.
J. F. Pierson.
J. H. McDonald.
M. C. Burns.
John Deckard.
G. H. Allen.
Frank Blurton.
S. E. Weece.
L. C. Cargill.

James C. Shelton.
B. E. Nelson.
Asa J. Miller.
Gus Eichman.
Jack McEwan.
Ray Berry.
Vernon Bonham.
George Loveland.
Elmer Miller.
G. W. Blythe.
John Krobat.
L. A. Prince.
H. A. Brown.
Arthur Dowling.
Andy Guinn.
W. B. Condren.
R. O. Cruse.

P. M. Moore.

F. H. Hudson.

T. A. Reed.

D. H. Frendiger.

Sam Barley.

J. P. Whittington.

Andy Turpin.

Bob Hudson.

W. C. Claburn.

J. R. Phillips.

Floyd Hamilton.

Floyd Milam.

W. R. Goodman.

Jack Henson.

Olin Cargill.

James Stockton.

EXHIBIT B

Willis Smith, \$249.00.

V. L. Rogers, \$218.50.

J. R. Rozell, \$256.00.

O. T. Keeney, \$225.50.

George Klimek, \$249.00.

J. R. Freudiger, \$225.50.

Curtis Brown, \$195.00.

Jess Saunders, \$248.00.

Bill Jones, \$28.50.

V. A. Weaver, \$128.00.

Malcolm Sweeney, \$187.50.

Charles Roberts, \$187.50.

Julian T. Miller, \$178.00.

E. A. Morphew, \$218.50.

J. R. Lundigreen, \$225.50.

G. W. Blythe, \$225.50.

Arthur Dowling, \$199.50.

Myrna Miller, \$178.00.

Henry Dowling, \$195.00.